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COURT OF CRIMINAL APPEALS
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No. PD-0577-18

In the
Court of Criminal Appeals of Texas
At Austin

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No. 01-17-00421-CR
In the First District Court of Appeals
Of Harris County, Texas

———♦———

No. 1528845
263rd District Court
Of Harris County, Texas

———♦———

STEVEN R. CURRY
Appellant
V.
THE STATE OF TEXAS
Appellee

———♦———

STATE'S BRIEF ON DISCRETIONARY REVIEW

———♦———

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ORAL ARGUMENT NOT PERMITTED

IDENTIFICATION OF THE PARTIES

Pursuant to Texas Rule of Appellate Procedure 38.1(a) and 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below so that the members of this Honorable Court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision of the case.

Counsel for the State:

Kim Ogg — District Attorney of Harris County

Jessica Caird — Assistant District Attorney on appeal

Allison Buess— Assistant District Attorneys at trial

Appellant or criminal defendant:

Steven R. Curry

Counsel for Appellant:

Carl Haggard — Counsel in the trial court

Crespin Michael Linton — Attorney on appeal

Trial Judge:

Honorable Jim Wallace — Judge Presiding

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TO THE HONORABLE COURT OF CRIMINAL APPEALS OF TEXAS:

STATEMENT OF THE CASE

The State charged appellant by indictment with the felony offense of failure to stop and render aid.[1] Appellant pled not guilty to the offense, proceeded to jury trial, and the jury returned a guilty verdict.[2] He elected for the jury to assess sentence, and it returned a verdict of 6 years confinement.[3] He filed timely written notice of appeal.[4]

STATEMENT OF THE PROCEDURAL HISTORY OF THE CASE

In a published opinion delivered on May 8, 2018, the First Court of Appeals affirmed the trial court's judgment after it found the evidence sufficient, and after if determined that the trial court had not erred when it refused to charge the jury on mistake of fact.[5] Appellant filed a petition for

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[1] (CR-8);
The appellate record consists of the following:
CR-Clerk's Record;
RRI-RRVII-Reporter's Record from March 31 through April 4, 2017, prepared by Marcia E. Barnett.
[2] (CR-401, 407).
[3] (CR-385, 420, 423).
[4] (CR-427).
[5] *Curry v. State*, No. 01-17-00421-CR, __ S.W.3d __, 2018 WL 2106897 (Tex. App.—Houston [1st Dist.] May 8, 2018, pet. granted).

discretionary review on July 5, 2018, and this Court granted it on December 12, 2018, to consider the following grounds:

1. The Court of Appeals erred in determining that the evidence was sufficient to support Appellant's conviction for Accident Involving Injury—Failure to Stop and Render Aid.

2. The Court of appeals erred in affirming the trial court's refusal to give a jury instruction on mistake of fact.[6]

STATEMENT OF FACTS

I. Appellant's truck collided with a bicycle ridden by John Ambrose.

On March 20, 2015, dispatch sent a La Porte Police Department officer to 2400 Sens Road at roughly 8:20 p.m. in response to a 911 call that a person appeared dead where he lay by the side of the road.[7] Upon arriving, the officer discovered that Mr. John Ambrose was still alive, breathed shallowly, but he appeared unresponsive.[8]

[6] (Appellant's Brief on Petition for Discretionary Review at 3).
[7] (RRIV-19, 23, 24, 27).
[8] (RRIV-23. 27).

The officer saw Mr. Ambrose's body as soon as he arrived at the scene.[9] He did not require anyone to point out where the man lay, and nothing needed to be moved so that he could see Mr. Ambrose as soon as the officer pulled up to the scene.[10] He noticed that Mr. Ambrose bled from his head, emergency medical services came to the scene, and Life Flight transported Mr. Ambrose to the hospital.[11]

The area where police found Mr. Ambrose was in front of Mr. Forest's home, which simultaneously housed his charity, Texas Veterans Helping Veterans.[12] Mr. Forest pulled into his driveway in a large yellow box truck around 8:00 p.m. after he picked up charitable deliveries.[13] He saw Mr. Ambrose on the ground as he pulled into his driveway, even before he got out of his truck.[14] The headlights from his truck shown on the area near his parked pickup truck, and they revealed the incapacitated man.[15] He also noticed that a bicycle had left marks on the fender of his parked pickup truck.[16]

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[9] (RRIV-28).
[10] (RRIV-28).
[11] (RRIV-31-32).
[12] (RRIV-28, 38-39, 41, 251, 267).
[13] (RRIV-24, 251, 254, 255, 257, 259, 267; State's Exhibit No. 1).
[14] (RRIV-257, 258, 259).
[15] (RRIV-257, 258, 259).
[16] (RRIV-262-263).

The bicycle had damage to its front that appeared consistent with impact from behind.[17] Something had bent the back wheel, damaged the bike, and the forks that held the front wheel had made gouges and scrapes in the pavement after the front wheel detached.[18] Police observed the front wheel farther to the north of where they found the bicycle's frame.[19] The bike had no frame damage on its side, minimal frame damage to the back, bowing of the front fork that held the front wheel, as well as scratches and a broken left pedal.[20] The bicycle had reflectors on it for visibility at night.[21]

Officers at the scene concluded that something threw Mr. Ambrose from the bike with enough force that he came under the truck, and he landed or slid to the opposite side of the truck.[22] They found pieces of debris nearby in the roadway that came from a Ford.[23] Officers even found a piece of debris with a serial number on it.[24] One of the officers realized they were looking for a Ford truck, and he learned the piece with the serial

[17] (RRIV-72-73).
[18] (RRIV-73, 74).
[19] (RRIV-73).
[20] (RRIV-74, 75).
[21] (RRIV-79).
[22] (RRIV-78).
[23] (RRIV-62, 63).
[24] (RRIV-65).

number belonged to the headlight of a Ford truck manufactured between 2009 and 2012.[25]

No one came to the scene that night to claim responsibility for the accident or admitted to driving a damaged Ford truck.[26] No one called La Porte Police to check on the welfare of Mr. Ambrose.[27] Police published information about the accident to the media while they searched for the truck, and they received a tip with a potential suspect's name.[28]

Police identified appellant as a possible driver of the truck, found that he resided within a mile of the accident scene, and an officer went to his home to run the plate number of the truck that sat in his driveway.[29] That truck's plate reflected a business name, police contacted the business, and they learned that appellant was an employee of the business.[30]

An employee of the business led police to the truck appellant drove on the date of the accident, and police observed damage consistent with a crash on it.[31] The white pickup had damage to the front headlight and the

[25] (RRIV-169).
[26] (RRIV-80).
[27] (RRIV-80).
[28] (RRIV-177).
[29] (RRIV-178, 180).
[30] (RRIV-180-181).
[31] (RRIV-181-182).

grill.[32] Police were able to match pieces from the roadway debris to appellant's work truck.[33] Another employee of the company explained that the company assigned white Ford work trucks to its employees.[34] He identified pictures of the truck assigned to appellant on March 20, 2015, they showed the damage to the front passenger side, and he noted the damage occurred over the weekend that Mr. Ambrose received his injuries.[35]

After the damage occurred to appellant's work truck, appellant told another employee that "something flew up and hit" his truck, so he needed to pick up another one.[36] Appellant claimed the incident happened late on the Friday night before he returned the damaged truck on Monday.[37] The truck had damage to the right front quarter of its body.[38] The head light assembly was broken, the front, passenger quarter panel bent, and dented near where the headlight would have sat.[39]

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[32] (RRIV-182).
[33] (RRIV-183
[34] (RRIV-152).
[35] (RRIV-152-153; State's Exhibit No. 56).
[36] (RRIV-153).
[37] (RRIV-153-154, 160).
[38] (RRIV-153).
[39] (State's Exhibit No. 55, 58, 59, 60, 61, 62, 63, 68).

II. Accident reconstruction evidence showed that appellant saw or should have seen that he hit a bicyclist.

In addition to the reflectors on Mr. Ambrose's bike, the damage to the bike and appellant's truck was consistent with appellant having seen that he hit a bicyclist.[40] The accident reconstructionist determined from the evidence that both the bike and appellant's truck went in a northbound direction when the accident occurred.[41] He concluded from the damage to the bike that appellant traveled at a higher rate of speed than the bike.[42]

From the gouge marks and scrapes on the roadway made by the bike, the reconstructionist determined that the impact occurred south of the gouge marks and scrapes.[43] The impact from the truck pushed the bike forward, caused the front wheel to detach, and sent the front tire further northbound than rest of the bike.[44] He concluded the point of impact was right at the beginning of Mr. Forest's private driveway.[45]

The truck's headlight stood higher than the back tire on Mr. Ambrose's bike.[46] Therefore, the reconstructionist could not tell whether it

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[40] (RRV-170-173, 186).
[41] (RRIV-170).
[42] (RRIV-170).
[43] (RRIV-171-172).
[44] (RRIV-172).
[45] (RRIV-174, 251; State's Exhibit No. 96; Defense Exhibit No. 2).
[46] (RRIV-184-185).

was the bike or Mr. Ambrose's body that caused the headlight to break.[47] Because the bicyclist and bike were going in the same northbound direction, and because the bike had reflective devices that would have reflected the truck's headlights, he believed that a driver should have seen the bicyclist.[48]

Yet, even if appellant had not seen Mr. Ambrose, if for example Mr. Ambrose suddenly pulled out in front of appellant, the reconstructionist testified that he was confident that appellant would have been aware of the impact when he struck the bike.[49] Based on the damage to the truck and to the bike, the impact was hard enough that the driver would have realized that he hit something.[50]

The debris trail veered from the northbound lane into the southbound lane for a brief period after impact, which showed that appellant took evasive actions, albeit too late to avoid the collision.[51] The point of impact and aftermath indicated that Mr. Ambrose rode two to three feet from the roadway's edge when appellant struck him.[52] The physical evidence did

[47] (RRIV-184-185).
[48] (RRIV-186).
[49] (RRIV-186-187).
[50] (RRIV-186-187).
[51] (RRIV-187, 188).
[52] (RRIV-199-200).

not support the conclusion that Mr. Ambrose rode his bike across the street either sideways or at an angle to appellant's truck.[53]

Appellant's hired expert contested that Mr. Ambrose rode two to three feet from the roadway's edge in a northbound direct, and instead he claimed it was more likely that Mr. Ambrose came from the private driveway at an angle to cross in front of the truck.[54] His conclusions relied almost exclusively on an assumption that Mr. Ambrose would have ridden in the parking lot to avoid the road, as well as the statements of appellant and his girlfriend.[55] But he admitted the physical evidence was consistent with the police reconstructionist's opinion.[56]

III. Appellant admitted that his truck collided with an unknown object, and that he left the scene without investigating whether anyone was injured.

Appellant's girlfriend testified that they went to lunch together that day, and appellant drank two 23-ounce beers around 1 p.m.[57] The couple met again for dinner, and appellant had two margaritas over the course of the meal.[58] They drove back to appellant's house in separate cars.[59]

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[53] (RRIV-236).
[54] (RRIV-356-360).
[55] (RRIV-361; RRV-19, 20, 38, 40, 49-50, 65, 67).
[56] (RRV-50).
[57] (RRIV-291-292).
[58] (RRIV-271).

Appellant's truck was in front of hers, and as they drove down Sens Road after dark, she saw the glass from appellant's headlight shatter.[60] Appellant appeared to startle, he jerked slightly, and his truck jerked.[61] Appellant nearly stopped his truck in the roadway, and his girlfriend had to break suddenly, as well.[62] Yet, neither of them got out of their vehicles to check the damage or see if anyone had been hurt.[63]

When the couple got to appellant's house, they looked at the damage to appellant's truck.[64] They got into the girlfriend's car and drove to the area of the accident, slowing down again, but neither of them got out of the car to look for what caused the accident or check for an injured person.[65] Appellant's girlfriend admitted that it was dark in the area and she could not see the ground when they drove back through the area going the opposition direction they had been going in when the accident occurred.[66] She thought she saw the profile or silhouette of someone standing by one the vehicles parked in the private driveway, but they did not stop.[67] Despite

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[59] (RRIV-272)
[60] (RRIV-271, 272-273, 275-276).
[61] (RRIV-276).
[62] (RRIV-277).
[63] (RRIV-279, 296-297).
[64] (RRIV-294-296).
[65] (RRIV-295-297).
[66] (RRIV-297-298).
[67] (RRIV-297-298).

the damage to appellant's truck that she thought might have come from someone throwing a bottle at it, the couple did not call police or report the incident.[68]

Appellant admitted to drinking two beers at lunch that day and two margaritas at dinner before he struck Mr. Ambrose.[69] He claimed he did not immediately report the incident to his employer, the party responsible for the truck, or contact authorities because he considered it more of an incident than an accident.[70] He claimed that he thought someone threw an unknown object at his truck, and he did not want an altercation, so he continued to his destination without stopping after the impact.[71] Appellant denied seeing Mr. Ambrose or his bicycle.[72] And he alternatively claimed it could have been road debris that flew up and damaged his truck, something hit his truck, or that he hit something.[73] He consistently admitted that he had no idea at the time what struck him, rather something thrown at his truck was but one possibility he considered.[74]

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[68] (RRIV-277, 280, 298).
[69] (RRIV-308-309, 324)
[70] (RRIV-308, 310, 315).
[71] (RRIV-312).
[72] (RRIV-309, 314).
[73] (RRIV-311, 325).
[74] (RRIV-311, 325-327, 335).

The damage to the truck clearly indicated to appellant that he struck something because it not only scratched the truck, but also broke the headlight, and bent the metal housing above it.[75] Afterwards, he rode by at five to ten miles per hour and saw some debris by the dumpster in the area of the impact, but he denied that he saw the large green, damaged bicycle resting against Mr. Forest's pickup truck.[76]

Appellant waited until Monday, three days later, to contact his employer about the damage.[77] All he told the employer was that he looked in the rearview mirror after the accident, but he did not mention returning to the scene.[78] His girlfriend learned of the hit-and-run accident that occurred on Friday night when she heard a news story the following Tuesday.[79] She told appellant about it, and the following day police tracked him down.[80] Appellant did not turn himself in, and instead he contacted an attorney on Monday.[81]

[75] (RRIV-326-327),
[76] (RRIV-329-330; State's Exhibit No. 38).
[77] (RRIV-315-316).
[78] (RRIV-335).
[79] (RRIV-280-281).
[80] (RRIV-319).
[81] (RRIV-281-281, 319-320, 337).

Appellant admitted that had he gotten out of the car, he would have found Mr. Ambrose.[82] Likewise, had he stopped his car completely and looked around, he would have seen the injured man.[83] He agreed that anyone looking at Mr. Ambrose would have known he needed medical intervention.[84] Yet, having not stopped his car completely for long enough to investigate, and having not gotten out of the car where he would have seen Mr. Ambrose, appellant did not seek help for him.[85]

IV. Appellant's actions caused the death of John Ambrose.

Mr. Ambrose's sister learned of his injuries from the hospital where he remained for several months until he moved to a rehabilitation facility.[86] A doctor from the Trinity Nursing Home testified that he received care of Mr. Ambrose in March 2016 when Mr. Ambrose was on a ventilator after a tracheostomy due to traumatic brain injury.[87] Mr. Ambrose was unresponsive, bedridden, and had to use tubes to take in food, as well as

[82] (RRIV-338).
[83] (RRIV-338-339).
[84] (RRIV-339).
[85] (RRIV-338-339).
[86] (RRIV-238, 239, 240).
[87] (RRIV-143, 144).

to breath.[88] He became permanently unresponsive because the brain injury caused by the motor vehicle accident.[89]

The doctor found no sustained improvement from Mr. Ambrose, which in his experience leads to infections for people in Mr. Ambrose's condition.[90] Mr. Ambrose ultimately died from infections and sepsis on June 26, 2016.[91] The doctor testified that as a result of the accident he because, had he not received the traumatic brain injury, he would not have needed the tubes that ultimately lead to his death.[92]

V. The jury returned a guilty verdict.

The jury returned a guilty verdict despite appellant and his girlfriend's protestations to a lack of knowledge that he had struck Mr. Ambrose.[93] The jury assessed sentence at six years confinement even though appellant had no criminal history and was probation eligible.[94]

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[88] (RRIV-144).
[89] (RRIV-144).
[90] (RRIV-145).
[91] (RRIV-146).
[92] (RRIV-146-147).
[93] (RRV-101, 106, 107, 108, 125; CR-407).
[94] (CR-386, 411-419, 420, 423).

SUMMARY OF ARGUMENT

The First Court of Appeals correctly held that the evidence was sufficient to support the conviction for failure to stop and render aid.[95] Contrary to appellant's assertions, the applicable version of Texas Transportation Code Section 550.021 did not require that appellant know that he had struck a person.[96] Instead, based on legislative amendments made in 2013, the failure to stop and render aid statute required appellant to stop and determine if someone required aid when he was involved in an accident.[97] Because appellant knew he collided with something, he was should have stopped at the scene, and determined if a person required aid.[98] Appellant failed in that duty and his failure resulted in Mr. Ambrose's death.

Additionally, the First Court of Appeals correctly affirmed the trial court's denial of appellant's request for a mistake-of-fact instruction because the mistaken beliefs he claimed did not negate the culpable mental state for the offense. The current version of Section 550.021

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[95] *See Curry*, 2018 WL 2106897, at *4 (finding evidence sufficient based on appellant's testimony, the physical evidence, and the wording of Tex. Transp. Code Ann. §550.021 (West 2014)).
[96] *See* Tex. Transp. Code Ann. §550.021 (West 2014).
[97] *Id*.
[98] *See id*.

requires only knowledge of an accident, not knowledge that he injured a person.[99] Therefore, appellant's claim that he did not know he had struck a bicycle or a person did not raise a mistake-of-fact defense.

An instruction on mistake of fact is not required when the evidence viewed in the light more favorable to appellant does not establish a mistake of fact.[100] Appellant's admission that he struck something experienced an impact that shattered his headlight, as well as bent the metal above it, demonstrated his knowledge that he was involved in an accident. His admission that he experienced an "incident" when something hit his truck further showed his knowledge of involvement in an accident. His self-serving claim that he did not consider it an accident did not raise a mistake-of-fact defense. Moreover, no testimony or evidence supported the instruction he requested when he did not assert that he had formed a belief, reasonable or otherwise, that someone had thrown an object at his truck. It was but one of the possibilities that flitted through his mind at the time, but he settled on no specific explanation for how the damage occurred that would have negated his culpable mental state when he left the scene of the accident.

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[99] *See* Tex. Transp. Code Ann. §550.021 (West 2014).
[100] *Granger v. State*, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999).

REPLY TO APPELLANT'S FIRST GROUND FOR REVIEW

The First Court of Appeals accurately analyzed the amended version of Section 550.021, which confined the necessary *mens rea* to knowledge of an accident, not knowledge that appellant had hit a person. Appellant misplaces his reliance on *Huffman v. State* because it analyzed a former version of the statute that defined accident differently than the current version defines it.[101] The evidence presented during trial more than sufficed to prove the elements of failure to stop and render aid under Texas Transportation Code Section 550.021.

I. The current version of Section 550.021 does not require knowledge that a person was injured.

The 83rd Texas Legislature made a significant change to Section 550.021 in 2013. The old version of the statute required, "[t]he operator of a vehicle involved in an accident resulting in injury to or death of a person" to:

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[101] *Compare Huffman v. State*, 267 S.W.3d 902, 908 (Tex. Crim. App. 2008) (addressing whether a unanimous verdict need be reached on whether defendant immediately stopped at scene, returned to scene, or remained at the scene, and defining the gravamen of the statute to be knowledge of the circumstances surrounding the conduct, namely an accident and a victim suffering an injury) *with Curry*, 2018 WL 2106897, at *3 (distinguishing *Huffman* from the wording of the current version of Tex. Transp. Code Ann. §550.021(a) (West 2014)).

(1) immediately stop at or near the scene of the accident,

(2) immediately return to the scene if he did not stop there; and,

(3) remain at the scene of the accident until he has complied with Section 550.023 of the Texas Penal Code.[102]

Section 550.023 then required a person involved in an accident that resulted in injury to a person, the death of a person, or damage to another vehicle, to provide information and reasonable assistance to anyone injured.[103] Section 550.023 remains unchanged since 2007.[104]

Yet, in 2013, the Texas Legislature significantly changed Section 550.021 to state:

(a) The operator of a vehicle involved in an accident that results **or is reasonably likely to result in injury to or death of a person**[105] shall:

(1) immediately stop the vehicle at the scene of the accident or as close to the scene as possible;

(2) immediately return to the scene of the accident if the vehicle is not stopped at the scene of the accident;

(3) **immediately determine whether a person is involved in the accident, and if a person is**

[102] Tex. Transp. Code Ann. §550.021 (a) (West 2007).
[103] Tex. Transp. Code Ann. §550.023 (West 2007).
[104] Tex. Transp. Code Ann. §550.023 (West 2014).
[105] (emphasis added to amended language).

> **involved in the accident, whether that person requires aid**;[106] and
>
> (4) remain at the scene of the accident until the operator complies with the requirements of Section 550.023.
>
> * * *
>
> (c) A person commits an offense if the person does not stop or does not comply with the requirements of this section.[107]

The statute goes on to punish as a second-degree felony a failure to comply with those requirements when the accident resulted in a person's death.[108]

The 2013 change to the statute added the language about "reasonably likely to result" in injury or death, and the requirement that a person "immediately determine whether a person [wa]s involved in the accident, and if a person [wa]s involved in the accident, whether that person require[d] aid[.]"[109] The amended language applied to all accidents

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[106] (emphasis added to amended language).

[107] Tex. Transp. Code Ann. §550.021 (West 2014); *see also* Individual's Responsibilities Following An Accident Reasonably Likely To Result In Injury To Or Death Of A Person; Imposing Criminal Penalties, 2013 Tex. Sess. Law Serv. Ch. 1099 (H.B. 3668) (Vernon's).

[108] *Id*.

[109] Individual's Responsibilities Following An Accident Reasonably Likely To Result In Injury To Or Death Of A Person; Imposing Criminal Penalties, 2013 Tex. Sess. Law Serv. Ch. 1099 (H.B. 3668) (Vernon's).

that occurred on or after September 1, 2013, including the one involving appellant.[110]

The First Court correctly concluded from the legislative amendment that Section 550.021 no longer requires that the operator know the accident injured a person.[111] Rather, the current version of the statute applies not only to accidents that resulted in death or injury, but also to accidents where it was reasonably likely to cause injury or death.[112] For that very reason, it specifies the operator must immediately determine whether a person was involved in the accident.[113] To interpret the statute differently would render meaningless the directive in subsection (a)(3).[114] The text of the statute, as written, did not require that appellant know he struck a person.[115] Instead, after the collision, it required that he stop and assess whether he had injured a person, a task that he failed to perform.[116]

Based on the language of the text, the First Court of Appeals followed the holding of the Fourteenth Court of Appeals, and determined that the current version of the statute required the State to prove that "the

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[110] *Id*.; (RRV-23-24; CR-8).
[111] *Curry*, 2018 WL 2106897, at *3 (distinguishing *Huffman*, 267 S.W.3d at 907-908 based on the amended language of the statute).
[112] *Id*. (citing Tex. Transp. Code Ann. §550.021(a) (West 2014)).
[113] Tex. Transp. Code Ann. §550.021 (a)(3) (West 2014).
[114] *See Curry*, 2018 WL 2106897, at *3.
[115] *See* Tex. Transp. Code Ann. §550.021 (West 2014).
[116] *See id*.

defendant knew that he was involved in an accident and failed to stop, investigate, and render any necessary aid."[117] As the Fourteenth Court noted in its opinion in *Mayer v. State*, to interpret the statute as only requiring the driver to stop when he knew there is a person injured would eliminate the mandate of section (a)(3) that demanded that he stop and assess whether a person needed aid.[118] Any court that construes a statute is expected to presume every word is used for a purpose, and First the Fourteenth Courts of Appeals' interpretations gave effect to every word, phase, clause, and sentence reasonably possible under the current version of the statute.[119] Section (a)(3) is not mere surplusage, and thus should be construed as written to require anyone involved in an accident to assess whether someone is injured.[120]

II. The legislative history behind the change to Section 550.021 shows that the Legislature deliberately eliminated appellant's lack of knowledge defense.

This Court need not consider the legislative history of the 2013 change to Section 550.021 unless if finds the statutory language

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[117] *Id*. (citing *Mayer v. State*, 494 S.W.3d 844, 849-51 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd))
[118] *Mayer*, 494 S.W.3d at 849-50.
[119] *See id*. at 850 (citing *State v. Hardy*, 963 S.W.2d 516, 520 (Tex. Crim. App. 1997)).
[120] *See id*.

ambiguous or unless the language as written would lead to an absurd result.[121] The statute as written clearly requires an operator involved in an accident where injury was reasonably likely to have resulted to stop or return, and immediately determine if someone was involved who requires aid, as well as to remain at the scene until help arrives.[122]

Yet, were this Court to need to resort to the legislative history, the Bill Analysis explained that the purpose behind the statutory change was to close a loophole in the past version of the statute.[123] It noted that this Court had interpreted the past version to require that the driver know the accident involved a person before the State could secure a conviction for failure to stop and render aid.[124] It began by explaining that bicycle and pedestrian traffic had increased throughout the state, with a significant increase in auto-pedestrian incidents that the Legislature hoped to minimize through prompt assistance from the driver to an injured person as soon as possible after the person sustained the injury from the motor vehicle.[125] It saw a defect in the past statute because the old language and interpretations of it

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[121] *See Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991).
[122] *See* Tex. Transp. Code Ann. §550.021(a) (West 2014).
[123] *See Mayer*, 494 S.W.3d at 850 (citing House Comm. on Transp., Bill Analysis, Tex. H.B. 3668, 83rd Leg., R.S. (2013)).
[124] *See Mayer*, 494 S.W.3d at 850 (citing House Comm. on Transp., Bill Analysis, Tex. H.B. 3668, 83rd Leg., R.S. (2013)).
[125] House Comm. on Transp., Bill Analysis, Tex. H.B. 3668, 83rd Leg., R.S. (2013).

provided an incentive for a driver to leave the scene without confirming that any person had been injured, and thus the Legislature designed the amended statute to correct that flaw.[126]

As the committee's analysis explained, the 2013 change to Section 550.021 would, "eliminate the kind of excuses that are growing common among alleged drunk drivers. If they flee an accident and sober up, they face a lesser charge by claiming that they thought they merely struck an animal or inanimate object—not another person."[127] The change to the statute applied to appellant's chosen defense. The statute in effect at the time of appellant's accident required, regardless of whether he knew he struck a person, that he stop, remain at the scene, and determine whether he had harmed a person.[128]

III. The evidence sufficed to show that appellant was involved in an accident that required him to stop and determine if he had injured someone.

Appellant knew the damage was substantial.[129] He swerved into the oncoming traffic lane for several feet as debris fell from his truck onto the

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[126] *Id*.

[127] *Mayer*, 494 S.W.3d at 850 (quoting House Comm. on Transp., Bill Analysis, Tex. H.B. 3668, 83rd Leg., R.S. (2013)).

[128] *See id*.; *see also* Tex. Transp. Code Ann. §550.021(a)(3) (West 2014).

[129] (RRIV-326-327) (showing appellant knew the collision bent the metal housing around the headlight and shattered the headlight).

roadway, he knocked out the headlight on the passenger side of his truck, and the collision bent the metal pieces that housed the headlight.[130] Appellant recognized the accident was substantial enough that he returned to the scene, but he never got out when he returned.[131] Had he done so, he would have seen the injured Mr. Ambrose as the first responding police officer and Mr. Forest easily did.[132]

The evidence established that appellant violated Section 550.021 regardless of whether he realized at the time that he struck a person. The culpable mental state required only that he know he was involved in a collision, an "accident" as understood in common parlance, which his testimony established.[133] The Legislature need not define accident, and the jury required no definition of it, to apply the term's conventional

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[130] (State's Exhibit No. 8, 58; RRIV-326-327).

[131] (RRIV-310, 313, 314, 325, 327, 330, 338-339).

[132] (RRIV-28, 43, 257-259, 338-339).

[133] *See* (RRIV-310-316, 318, 325-327); *see also* Tex. Gov't Code Ann. §311.011(a) (West 2014) (applying conventional meaning to undefined statutory terms); *see also* New Oxford American Dictionary 9 (3rd ed. 2010) (defining accident as "unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury."); *Steen v. State*, 640 S.W.2d 912, 913 (Tex. Crim. App. 1982) (interpreting "involved in a collision" to be sufficient to show "involved in an accident" for purposes of failure to stop and render aid); *Sheldon v. State*, 100 S.W.3d 497, 500-04 (Tex. App.—Austin 2003, pet. ref'd) (defining accident broadly in the context of automobile accidents to include victim jumping from car even in the absence of a collision); *Rivas v. State*, 787 S.W.2d 113, 114-16 (Tex. App.—Dallas 1990, no pet.) (stating that "involved in an accident" has not been defined by statute or judicially, it is given its ordinary meaning, but the term certainly includes a collision).

meaning which generally includes a collision between a motor vehicle and something that damages it.[134] Rather, Texas courts have long defined a motor vehicle accident to include a collision between a vehicle and another object, person, or car.[135] In other interpretations of involvement in an accident, Texas courts have included a defendant who caused another vehicle to collide a victim's car, as well as circumstances in which someone jumped or fell from a motor vehicle.[136] The First Court's holding considered

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[134] *See* Tex. Gov't Code Ann. §311.011(a) (West 2017); *see also* Tex. Transp. Code Ann. §550.021 (West 2014) (failing to define the term accident); *Steen*, 640 S.W.2d at 913-14 (finding that the resulting collision and appellant's acts which caused it showed him to be "involved in an accident" requiring him to stop and render aid); *Sheldon*, 100 S.W.3d at 501-509 (noting that a collision was not required to prove that the defendant was involved in an accident, but including collision among the possible means of proving involvement in an accident); *Rivas*, 787 S.W.2d at 114 ("While the phrase 'involved in an accident" certainly includes 'collision,' it is not exclusively limited to that term.").

[135] *See Lopez v. State*, Nos. 11-10-00255-CR, 11-10-00256-CR, 11-10-00257-CR, 2012 WL 2129160, at *1 (Tex. App.—Eastland Aug. 2, 2012, pet. ref'd) (not designated for publication) (noting that Texas Courts have construed the term "accident" from §550.021 based on common usage which included referring to a collision involving a motor vehicle) (citing *Sheldon*, 100 S.W.3d at 501-03; *Rivas*, 787 S.W.2d at 113); *see also Rivas*, 787 S.W.2d at 114 (construing a collision as involvement in an accident).

[136] *See Sheldon*, 100 S.W.3d at 501-509 (applying Section 550.021 to victim's intentional act of jumping from a moving vehicle which caused her death because it met the traditional understanding of an "accident" as the term was used under the Texas Transportation Code); *Rivas*, 787 S.W.2d 113 (finding evidence sufficient to establish under Section 550.021 that an accident had occurred when passenger jumped from car); *Steen*, 640 S.W.2d at 914 (holding that collision between defendant's vehicle and complainant's sufficed to prove he had been "involved in an accident" under a precursor statute to Section 550.021, even though defendant had not driven the car that struck the complainant head-on); *see also Lopez*, 2012 WL 2129160, at *1 (noting that

the cases that came before it for guidance on the breadth of the common understanding of the term "accident", not as factually identical circumstances to this case.[137] The First Court's consideration of this Court's holding in *Steen v. State*, along with intermediate appellate court holdings in *Rivas v. State* and *Sheldon v. State*, provided reasonable guidance on interpreting whether the collision appellant experience amounted to an accident under Section 550.021.[138]

The First Court referenced the holdings in *Steen*, *Sheldon*, and *Rivas* for the proposition that interpretations of "involved in an accident" are extremely board and encompass a wide variety of circumstances.[139] In *Steen*, this Court interpreted "involved in an accident" as broad enough to encompass a defendant whose driving caused two other vehicles to collide,

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Texas Courts have construed the term "accident" from §550.021 based on common usage which included referring to a collision involving a motor vehicle) (citing *Sheldon*, 100 S.W.3d at 501-03; *Rivas*, 787 S.W.2d at 113).

[137] *See Curry*, 2018 WL 2106897, at *3-4 (explaining that Section 550.021 had no definition of accident, conventional meaning applied, and that accident had been broadly construed in the context of automobile accidents) (citing Tex. Gov't Code Ann. §311.011(a) (West 2014); New Oxford American Dictionary 9 (3d ed. 2010); *Sheldon*, 100 S.W.3d at 500-04; *Rivas*, 787 S.W.2d at 114-116; *Steen*, 640 S.W.2d at 914).

[138] *See id*.; (citing *Sheldon*, 100 S.W.3d at 500-04; *Rivas*, 787 S.W.2d at 114-116; *Steen*, 640 S.W.2d at 914).

[139] *See Curry*, 2018 WL 2106897, at *3-4 (citing Tex. Gov't Code Ann. §311.011(a) (West 2014); New Oxford American Dictionary 9 (3d ed. 2010); *Sheldon*, 100 S.W.3d at 500-04; *Rivas*, 787 S.W.2d at 114-116; *Steen*, 640 S.W.2d at 914).

even though his car was not involved in the collision that caused the victim's injury.[140]

Likewise in *Sheldon*, the Austin Court of Appeals, when faced with the lack of a statutory definition for "accident" reviewed dictionary definitions, and it ultimately applied the word's ordinary meaning.[141] The Austin Court went on to find the evidence factually sufficient to prove guilt under Section 550.021 when the victim intentionally jumped from a moving vehicle, which caused her death, even though no collision had occurred because the situation still constituted an accident.[142] The Austin Court reviewed case law from the Dallas Court of Appeals, namely the *Rivas* opinion, along with case law from Iowa, Arizona, Alaska, Washington, Virginia, New York, and California who had similar statutes, before it determined that the jury could have reasonably concluded the victim's act

[140] *Steen*, 640 S.W.2d at 914 ("Without ensnarling ourselves in the definition and implications of the term 'involved in an accident', we hold that the appellant was indeed involved in the collision between Hill and the north-bound vehicle" when the victim swerved to avoid hitting appellant and struck another car).

[141] *Sheldon*, 100 S.W.3d at 500.

[142] *Id*. at 501-04 (holding after a review of several other jurisdictions case law, as well as Texas's, that Section 550.021 does not require a collision for a person to be "involved in an accident", and therefore the evidence was sufficient to prove guilt for failure to stop and render aid when the victim jumped from the car, despite the defendant's claim that no "accident" had occurred).

of jumping from the moving car amounted to an accident under Section 550.021.[143]

The Dallas Court of Appeals' opinion in *Rivas* also found that a collision was not necessary for the driver to be involved in an accident under the failure to stop and render aid statute, and yet it found that a motor vehicle collision was most certainly included within the general understanding of the term accident.[144] As the Dallas Court reasoned, "While the phrase 'involved in an accident' certainly includes 'collision,' it is

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[143] *Id*. (citing *Rivas*, 787 S.W.2d at 113-14; *State v. Carpenter*, 334 N.W.2d 137, 138-39 (Iowa 1983) (holding Iowa statute involving accident did not require collision between defendant and another vehicle or person); *Arizona v. Rodgers*, 184 Ariz. 378, 909 P.2d 445 (App. 1995) (holding defendant involved in an accident when passenger leapt from moving car, and that law did not require defendant's car to have caused the injury); *Wylie v. Alaska*, 797 P.2d 651, 655 (Alaska App. 1990) (rejecting claim that defendant was not involved in accident when victim leapt from car defendant drove); *Washington v. Silva*, 106 Wash.App. 586, 24 P.3d 477, 480 (2001) (held intentional conduct of defendant or victim was included within the meaning of accident under the Washington statute); *Smith v. Virginia*, 8 Va.App. 109, 379 S.E.2d 374, 375-77 (1989) (holding fall from bumper was an accident even without a collision or the truck having struck the injured person); *People v. Slocum*, 112 A.D.2d 641, 492 N.Y.S.2d 159, 160 (1985) (construing as an accident someone jumping from a moving car as the term was used in New York statutes); *People v. Kroncke*, 70 Cal.App.4th 1535, 83 Cal.Rptr.2d 493, 495-96 (1999) (rejecting defendant's claim that no accident occurred when person jumped from his moving car).

[144] *See Rivas*, 787 S.W.2d at 115 (responding to defendant's argument that "involved in an accident" required an actual, physical collision by finding that the case law and statute militated in favor of a more expansive reading thatincluded the victim's deliberate act of jumping from the moving car) ("While the phrase 'involved in an accident" certainly includes 'collision,' it is not exclusively limited to that term.").

not exclusively limited to that term."[145] In this case, the First Court of Appeals relied on *Steen*, *Sheldon*, and *Rivas* for its holding that collision was included within the common understanding of the term "involved in an accident" for purposes of Section 550.021.[146]

Appellant's complaints regarding the First Court's consideration of the dictionary definition for "accident" mentioned in the opinion lacks merit.[147] The First Court did not use the dictionary definition in its analysis, but instead relied on the interpretation of the term from this Court and others, all of which would have included an actual collision of a motor vehicle with something or someone else as within the common understanding of the term "involved in an accident."[148] Although some of the lower court

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[145] *Rivas*, 787 S.W.2d at 115.

[146] *Compare Curry*, 2018 WL 2106897, at *3-4 ("This collision constitutes an 'accident' for purposes of Section 550.021.") (citing *Steen*, 640 S.W.2d at 913-914; *Sheldon*, 100 S.W.3d at 501-509; *Rivas*, 787 S.W.2d at 114) *with Steen*, 640 S.W.2d at 913-14 (finding that the resulting collision and appellant's acts which caused it showed him to be "involved in an accident" requiring him to stop and render aid); *Sheldon*, 100 S.W.3d at 501-509 (noting that a collision was not required to prove that the defendant was involved in an accident, but clearly including collision among the possible means of showing involvement in an accident); *Rivas*, 787 S.W.2d at 114 ("While the phrase 'involved in an accident" certainly includes 'collision,' it is not exclusively limited to that term.").

[147] *See* (Appellant's Brief on Petition for Discretionary Review at 5).

[148] *Compare Curry*, 2018 WL 2106897, at *3-4 ("This collision constitutes an 'accident' for purposes of Section 550.021.") (citing *Steen*, 640 S.W.2d at 913-914; *Sheldon*, 100 S.W.3d at 501-509; *Rivas*, 787 S.W.2d at 114) *with Steen*, 640 S.W.2d at 913-14 (finding that the resulting collision and appellant's acts which caused it showed him to be "involved in an accident" requiring him to

opinions addressed the deliberate actions of the injured person when he or she jumped from the driver's car, they too concluded that such an action still resulted in the driver being "involved in an accident" under the statute.[149] No part of the statute required him to have caused the accident to be bound by the duty to stop, remain, investigate whether someone had been injured, and if so, to render aid to that person.[150]

The First Court's analysis which referenced appellant's admission to a collision with an unknown object, and from which it concluded that he knew he was involved in accident, used the everyday common understanding of the word "accident" the jury would have reasonably

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stop and render aid); *Sheldon*, 100 S.W.3d at 501-509 (noting that a collision was not required to prove that the defendant was involved in an accident, but clearly including collision among the possible means of showing involvement in an accident); *Rivas*, 787 S.W.2d at 114 ("While the phrase 'involved in an accident" certainly includes 'collision,' it is not exclusively limited to that term.").

[149] *See Sheldon*, 100 S.W.3d at 501-509 (listing multiple cases wherein a passenger's conduct of jumping or falling constituted the common understanding of the term accident, but which did not require that a collision actually occur to meet the requirements of Section 550.021); *see also Rivas*, 787 S.W.2d at 114 (finding the victim's act of jumping from the moving car still constituted the driver being involved in an accident).

[150] *See* Tex. Transp. Code Ann. §550.021(a) (implicating all vehicle operators involved in an accident without assigning blame only to the person responsible for the accident); *see also Sheldon*, 100 S.W.3d at 500-04 (finding evidence factually sufficient to uphold verdict for failure to stop and render aid when victim jumped from defendant's car even though defendant did not cause victim to jump); *Rivas*, 787 S.W.2d at 115-116 (noting the defendant's acts were closely related to and having an effect on the passenger who willfully jumped from appellant's car when he tried to outrun a train).

applied.[151] The jury need not have received that definition because the law expected them to apply their common understanding of the term.[152] A vehicular collision meets the common understanding of a motor vehicle "accident," and the evidence more than sufficed to show that appellant knew he had been involved in a motor vehicle collision.[153] The statute did not required that appellant know he struck a person in order for him to stop and assess whether anyone was injured.[154] Instead, he need only know he was involved in an accident, in this case a collision and he was required to stop at the scene and determine if anyone needed aid.[155]

The record leaves no question based on appellant's testimony and that of his girlfriend that appellant knew he struck something.[156] He knew the collision occurred with enough force to break his headlight, bend the

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[151] *See Curry*, 2018 WL 2106897, at *3-4; *see also* (CR-401-403) (listing the law and the application paragraph reviewed by the jury in reaching its verdict).

[152] Tex. Gov't Code Ann. §311.011(a) (West 2014) ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage.").

[153] (RRIV-310-316, 325-327, 330, 335).

[154] *See* Tex. Transp. Code Ann. §550.021(a)(3) (West 2014).

[155] *See id*.; *see also Goss v. State*, 582 S.W.2d 782, 785 (Tex. Crim. App. 1979) (holding the culpable mental for failure to stop and render aid is knowledge of an accident before the duty to stop and render aid arises); *Mayer*, 494 S.W.3d at 850 ("We therefore consider whether the evidence was legally sufficient to prove that appellant knew that she was involved in an accident, the mental state triggered her duty to stop, investigate, and render aid.") (citing *Goss*, 582 S.W.2d at 785).

[156] (RRIV-186, 187, 188, 276,277-278, 280, 310, 311, 312, 313, 314, 325-326).

metal above it, and do visible damage to his heavy-duty work truck.[157] Despite knowledge of the collision, appellant did not stop and investigate, even after he saw the damage and returned to the scene.[158] The evidence sufficed to prove his knowledge that he was involved in an accident, as well as his failure to stop and render aid.[159]

Lastly, as to appellant's specious claim that he was scared to get out of his car to investigate, this has no relevance in regard to his sufficiency complaint.[160] Appellant did not proffer a necessity defense at trial, but instead hinged his defense on a claim that he did not know he had struck a person.[161] His reasoning for failing to get out of the car when his headlight shattered mid-drive only supports his clear knowledge that he was involved in an accident, but he nonetheless failed to stop and investigate whether anyone needed help.[162]

The First Court properly analyzed the evidence based on the common understanding of the undefined term and legal precedent, all of

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[157] (RRIV-326-327; State's Exhibit No. 58-64).
[158] (RRIV-312-314).
[159] (RRIV-310-318, 325-327, 330, 335, 338-339).
[160] *See* (Appellant's Brief on Discretionary Review at 7).
[161] *See* (RRV-89-95) (proffering a mistake-of-fact defense, not necessity under Tex. Penal Code Ann. §9.22 (West 2014), namely a reasonable belief that illegal conduct was immediately necessary to avoid imminent harm).
[162] *See* Tex. Transp. Code Ann. §550.021 (West 2017); *Goss*, 582 S.W.2d at 785 (knowledge of accident triggers requirement that he stop and render aid).

which concluded that knowledge of a collision met the definition of knowing involvement in an accident under Section 550.021.[163] This Court should overruled appellant's first ground for review because the evidence sufficed to support the verdict, and because the First Court of Appeals properly confined its analysis of the *mens rea* in the statute to knowledge of involvement in an accident.[164] This Court should affirm the decision of the First Court of Appeals.

REPLY TO APPELLANT'S SECOND GROUND FOR REVIEW

Appellant's second ground for review contests the First Court of Appeals' holding that the trial court properly refused to instruct on mistake of fact. He premises his complaint on an inaccurate claim the appellate court failed to understand that he contested knowing involvement in an

[163] *See Curry*, 2018 WL 2106897, at *3-4 (concluding the evidence sufficed to show appellant knew he was involved in a collision of some kind, which obligated him to stop and determine whether a person was involved) (citing Tex. Gov't Code Ann. §311.011(a) (West 2014); *Steen*, 640 S.W.2d at 914; *Sheldon*, 100 S.W.3d at 500; *Rivas*, 787 S.W.2d at 115).

[164] *See Goss*, 582 S.W.2d at 785; *Mayer*, 494 S.W.3d at 849 (citing *Goss*, 582 S.W.2d at 785).

accident, not just a failure to realize that he had struck a person.[165] The First Court, however, addressed both.[166]

In regard to his claim that he was not knowingly involved in an accident, the First Court found it unsupported by the evidence after appellant admitted that he knew he was involved in a collision between his truck and an unknown object that broke his headlight.[167] The mistaken belief appellant claimed contested knowing what he hit, not whether he realized that he struck something.[168] But as he himself admitted, his truck hit something with enough force to shatter the headlight, which he knew at

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[165] (Appellant's Brief on Discretionary Review at 9-10).

[166] *Curry*, 2018 WL 2106897, at *4

[167] *Curry*, 2018 WL 2106897, at *4 ("In his testimony, Curry conceded that he knew that something had collided with his truck and broken his headlight. Thus, the evidence does not raise a fact issue as to whether an accident had occurred at all.") (citing *Steen*, 640 S.W.2d at 914; *Sheldon*, 100 S.W.3d at 500; *Rivas*, 787 S.W.2d at 115; *Granger v. State*, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999)).

[168] *See id*.; *see also* (RRIV-276-280, 290, 293, 297)(girlfriend testifying to shattering of appellant's headlight, she did not see anyone throw anything, and agreeing she returned to the scene of the accident with appellant); (RRIV-310-318, 325, 335 (testifying to shattering of headlight, shock, fear of an altercation, return to scene, but calling it an "incident" not an "accident", observation of glass on the road and debris, and noting he did not know if something struck his truck or was thrown at it, acknowledging that something impacted and struck his truck, and agreeing there was a collision between his truck and something else).

the moment it occurred.[169] And he agreed that a collision occurred between his truck and what turned out to be Mr. Ambrose and his bike.[170]

Appellant's semantic games in which he called the collision an "incident" not and "accident", did not describe a mistaken belief that would have negated the culpable mental state for the offense, and therefore the trial court correctly refused to give a mistake-of-fact instruction.[171] Appellant's mistaken belief throughout his testimony was not a lack of knowledge that he was involved in a collision, but instead a mistaken belief about what he struck, or what struck him.[172] Those claims did not negate the culpable mental state required to convict for failure to stop and render aid.[173]

Appellant's contention in his second point is an extension of his first, namely that he did not realize he struck a person, and for that reason, he

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[169] (RRIV-310-313, 325).
[170] (RRIV-325, 326-327, 338-339).
[171] *See* (RRIV-315).
[172] (RRIV-310, 312, 313-314, 318, 325-327, 329, 335).
[173] *See Goss*, 582 S.W.2d at 785 ("[T]he culpable mental state thereby required for the offense of failing to stop and render aid is that the accused had knowledge of the circumstances surrounding his conduct…,i.e., had knowledge that an accident had occurred.") (citing Tex. Penal Code Ann. §6.03(b) (West 1979)) (internal citation omitted); *Celis v. State*, 416 S.W.3d 419, 430 (Tex. Crim. App. 2013) (holding that to charge on mistake of fact the mistaken belief must negate the culpable mental state required to commit the crime).

did not categorize it as involvement in an accident.[174] Since the statute does not require affirmative knowledge that he struck someone, his belief that he had struck something else did not require the trial court to charge on mistake of fact.[175] As for his claim that something was thrown, he asserted no actual belief to that effect at the time of the accident when he decided not to stop and investigate.[176] The First Court properly affirmed the denial of the mistake-of-fact instruction when considered in light of the record and arguments made in the trial court.[177]

I. A mistake-of-fact instruction is only required when the mistaken belief negates the culpable mental state required to commit the charged offense.

Texas Penal Code Section 8.02(a) states that, "[i]t is a defense to prosecution that the actor through mistake formed a reasonable belief

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[174] (RRIV-310, 315; RRV-91; CR-387-289) (testifying that he considered it more of an incident than an accident because he did not know what had broken his headlight, his attorney describing appellant's request for a mistake-of-fact instruction as "a reasonable mistake of fact to believe that something had been thrown, or an object hurled, or something had hit, that ***other than a person or a vehicle***. He testified to that himself", and confining the written request to reasonableness of belief someone had thrown an object at his car) (emphasis added).

[175] *See Goss*, 582 S.W.2d at 785 (concluding the culpable mental state for failure to stop and render aid is knowledge of an accident); *Mayer*, 494 S.W.3d at 849 (same); *Celis*, 416 S.W.3d at 430 (holding that to charge on mistake of fact the mistaken belief must negate the culpable mental state required to commit the crime).

[176] (RRIV-310-311, 315-316, 325-327, 330, 335; RRV-91; CR-387-289).

[177] (RRIV-310-311, 315-316, 325-327, 330, 335; RRV-91; CR-387-289).

about a matter of fact if his mistaken belief negated the kind of culpability required for the commission of the offense."[178] This Court interpreted "kind of culpability" as "culpable mental state" for purposes of the Texas Penal Code Section 8.02.[179] Therefore, "[t]he instruction on mistake of fact…applies only with respect to elements that require proof of a culpable mental state."[180] Absent the particular mistaken fact negating the proof required to show the culpable mental state, the trial court does not err by denying the request.[181]

II. The First Court's opinion addressed both of appellant's claims regarding a mistaken belief that no person was involved and a mistaken belief that what occurred did not constitute an accident, but found neither claim supported a mistake-of-fact instruction.

Contrary to appellant's assertion, the First Court of Appeals considered both of appellant's claims, namely that he did not realize a person was involved in the accident and his claim that he did not believe an accident occurred.[182] The Court dismissed both claims of a mistaken belief

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[178] Tex. Penal Code Ann. §8.02(a) (West 2016).

[179] *Celis*, 416 S.W.3d at 430 (citing *Beggs v. State*, 597 S.W.2d 375, 378 (Tex. Crim. App. 1980)); *see also* Tex. Penal Code Ann. §8.02 (West 2017) (defining a mistake-of-fact defense).

[180] *Id*. (citing *Beggs*, 597 S.W.2d at 378).

[181] *Id*. at 432 (citations omitted).

[182] *Curry*, 2018 WL 2106897, at *4 (addressing both appellant's claim that he did not know he had struck a person, but finding that it did not negate the

when the first did not negate the culpable mental state required to commit the crime and the second was unsupported by the evidence.[183] Neither claim required a mistake-of-fact instruction.[184]

First, Texas Transportation Code Section 550.021 no longer requires a defendant to know that he struck a person, so appellant's first contention that he did not know what he struck did not negate the culpable mental state to require a mistake-of-fact instruction.[185] Second, the evidence when

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culpable mental state of failure to stop and render aid, and finding his claim that he did not know he was in an accident unsupported by the evidence when he admitted knowledge of the collision and knowledge of the damage to his truck).

[183] *Curry*, 2018 WL 2106897, at *4 ("Curry conceded that he knew that something had collided with his truck and broken his headlight. Thus, the evidence did not raise a fact issue as to whether an accident had occurred at all.") (citing *Steen*, 640 S.W.2d at 914; *Sheldon*, 100 S.W.3d at 500; *Rivas*, 787 S.W.2d at 115).

[184] *See id*. (citing *Steen*, 640 S.W.2d at 914; *Sheldon*, 100 S.W.3d at 500; *Rivas*, 787 S.W.2d at 115); *see also Goss*, 582 S.W.2d at 785 (concluding the culpable mental state for failure to stop and render aid is knowledge of an accident); *Mayer*, 494 S.W.3d at 849 (same); *Celis*, 416 S.W.3d at 430 (holding that to charge on mistake of fact the mistaken belief must negate the culpable mental state required to commit the crime); *Hill v. State*, 765 S.W.2d 794, 797 (Tex. Crim. App. 1989) ("[A]ppellant is entitled to have the jury instructed on the defense of mistake of fact if there is some evidence before the jury that through mistaken he formed a reasonable belief about a matter of fact and his belief negated the culpability essential to the State's case."); *Granger v. State*, 3 S.W.3d 36, 38 (Tex. Crim. App. 1999) ("If the evidence viewed in a light favorable to appellant does not establish a mistake-of-fact defense, an instruction is not required) (citing *Dyson v. State*, 672 S.W.2d 460, 463 (Tex. Crim. App. 1984)).

[185] *Compare* Tex. Transp. Code Ann. §550.021(a)(3) (West 2014) (requiring a person involved in an accident to immediately determine whether a person was involved in the accident, and if so, to remain at the scene and comply

viewed in the light most favorable to appellant, did not raise a mistake-of-fact instruction in regard to appellant's claim that he did not realize he had been involved in an accident.[186]

Rather, appellant admitted that his car impacted something that shattered his headlight.[187] He realized that he had struck something, he experienced an impact, he agreed it resulted in a collision, and he acknowledged that he did not stop to investigate what caused the damage, as the statute required him to do.[188] The First Court characterized appellant's second contention as without evidence because, when viewed in the light most favorable to him, it did not establish a mistake-of-fact

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with Section 550.023) *with Celis*, 416 S.W.3d at 430 (requiring the mistaken fact negate the defendant's *mens rea*).

[186] *See* (RRIV-315, 325-329; RRV-91; CR-387-289) (claiming it was an incident, not an accident, but admitting to knowledge that he struck something or something struck him); *Hill*, 765 S.W.2d at 797; *Granger*, 3 S.W.3d at 38 ("If the evidence viewed in a light favorable to appellant does not establish a mistake-of-fact defense, an instruction is not required) (citing *Dyson*, 672 S.W.2d at 463).

[187] (RRIV-310, 311, 326-328) (acknowledging that he knew the moment something shattered his headlight, but he did not stop to determine what had broken it).

[188] (RRIV-325-330) (describing it as an incident where his truck struck something or something struck his truck, describing it as an impact, and agreeing it was a collision); *but see* Tex. Transp. Code Ann. §550.021(a)(3) (West 2018) (requiring appellant involved in an accident to stop and investigate if anyone was injured).

defense when he acknowledged experiencing a collision with an unknown objection that damaged his truck.[189]

III. Appellant's self-serving statements did not present a mistake-of-fact defense when his and his girlfriend's testimony established that he knew he had a collision in his truck when he struck Mr. Ambrose.

To establish the culpable mental state for failure to stop and render aid, the State must prove that the defendant knew he was involved in an accident, or the crime would be a strict liability offense.[190] Yet, the evidence unequivocally established that appellant knew he struck something, and he only contested the usage of the word "accident" to describe it because he did not know at the time what he struck.[191]

All the evidence, including appellant's own testimony, showed his realization at the time that he had been involved in a collision.[192] His

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[189] *See Curry*, 2018 WL 2106897, at *4 (citing *Granger*, 3 S.W.3d at 38).

[190] *Goss*, 582 S.W.2d at 785.

[191] (RRIV-310-316).

[192] *Compare* (RRIV-294) (appellant's girlfriend referring to an impact with a car as "an incident" and calling it an "accident" only when two cars hit each other, but then testifying an unknown object hitting a car "could be an accident. It could be an incident. It depends on the situation."); (RRIV-315) ("Because it wasn't an accident, it was an incident that happened.") *with* (RRIV-276, 277, 279-280, 294-297) (admitting the impact startled appellant, he jerked, he almost came to a complete stop, but he drove to his house where he and the girlfriend saw the damage and then returned to the scene); (RRIV-310-312, 314, 316, 318, 325-331, 335) (acknowledging he knew the moment something struck his truck, describing it as something hitting his truck, he pressed the

arbitrary distinction calling it an "incident" not an "accident" contradicted his own assertions about the event, as well as the evidence given by his girlfriend.[193] Both clearly testified to a collision with enough force to shatter the truck's headlight.[194]

Even without appellant admitting knowledge of the exact source of the collision, the First Court correctly concluded that under the statute, appellant was required to stop, remain, and assess whether a person had been injured to comply with Section 550.021(a).[195] The addition of subsection (a)(3) created a duty to determine whether the collision injured a person, otherwise the inclusion of, "immediately determine whether a person is involved in the accident, and if a person is involved in the accident, whether that person requires aid" would be unnecessary.[196] The statute places a duty on anyone involved in a collision to perform an

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breaks, and then his sole investigation at the time of the impact was to look into his mirrors).

[193] *See* (RRIV-294, 315) (calling it an incident not an accident), *but see* (RRIV-276, 277, 279-280, 294-297, 310-312, 314, 316, 318, 325-331, 335) (describing his thought at the moment something hit and damaged his truck).

[194] (RRIV-276, 280, 294, 296, 302, 310, 311, 315, 325-327) ("I believed that somebody either threw something, or hit something, or something hit my truck, or that it was just something that had just came up off the road. I don't know.") ("I did not believe that I was in an accident. I always thought it was just an incident, that the headlight was broke. I didn't know what broke the headlight.").

[195] *See Curry*, 2018 WL 2106897, at *4 (citing *Granger*, 3 S.W.3d at 38); *see also* Tex. Transp. Code Ann. §550.021(a)(3) (West 2017).

[196] *See Mayer*, 494 S.W.3d at 850 (citing Tex. Transp. Code Ann. §550.021(a)(3) (West 2014)).

investigation into whether someone was hurt during it.[197] Appellant failed in his duty to stop and investigate.[198]

Appellant attempts to avoid responsibility by refusing to call the collision an "accident," but his self-serving statement was unsupported by any evidence and does not in itself require a mistake-of-fact instruction. Whether he considered it an accident, a strike, something hitting his car, a collision, or an incident, the particular term used did not present a mistaken factual belief that would negate his culpable mental state, but instead a mistaken legal assumption that an "accident" required the driver involved to know what he struck.[199]

Appellant and his girlfriend engaged in a game of semantics when they claimed to consider it an "incident" not an "accident" or an "impact" not an "accident." Such word games do not raise a mistaken belief regarding a fact necessary to bring a mistake-of-fact defense, and certainly not the one proposed by defense counsel that asked the jury to decide whether the

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[197] *See* Tex. Transp. Code Ann. §550.021(a); *see also id*.

[198] (RRIV-312).

[199] *See* (RRIV-310-311); *but see* Tex. Penal Code Ann. §8.02(a) (West 2016) (stating a mistake of fact must constitute a reasonable belief about a matter of fact that negated the culpability for the offense); Tex. Penal Code Ann. §8.03 (West 2016) (stating it is not a defense to prosecution that the actor was ignorant of the law or any provision of law, but it is an affirmative defense to prosecution when he reasonably believed the conduct did not constitute a crime based on an official statement of law or written interpretation made by a court of record or public official charged with responsibility for interpreting the law in question).

State had proven beyond a reasonable doubt that appellant did not believe an object had been thrown at him.[200]

IV. The evidence at trial did not show that appellant held the mistaken belief used as support for the mistake-of-fact instruction claimed in his written request.

Appellant never contended that be believed a bottle struck his truck, but instead he claimed at the time that he did not know what happened, he thought someone may have thrown something, or he hit something, or something came up from the road and hit his truck.[201] Appellant had no firm theory, much less reasonable belief, about what struck his car.[202] He knew only that something struck it with enough force to shatter his headlight.[203] Contrary to the assertions raised in appellant's written request for a mistake-of-fact instruction, he presented no evidence that he actually

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[200] *See* (CR-387-389) (suggesting the mistake-of-fact instruction be phrased that the jury must decide whether the State proved beyond a reasonable doubt that—(1) the defendant did not believe that someone had thrown an object that struck the right headlight fixture of his truck; or (2) that the defendant's belief that someone had thrown an object which struck his headlight was not reasonable).

[201] (RRIV-311, 315, 318, 325) (claiming not to know what struck his truck, and that something thrown at it was only one theory he had about what may have caused the damage).

[202] (RRIV-301-302, 311, 315, 318, 325).

[203] *Id*.

believed at the time of the collision that an unknown assailant had thrown something at his truck.[204]

The thrown bottle explanation was the belief expressed by his girlfriend, not himself, and her mistaken belief did not negate appellant's culpable mental state.[205] He listed a thrown object as just one possibility he considered as a potential cause of the damage, but he also believed it could as easily have been road debris, and he acknowledged a present sense impression at the time that something may have hit his truck.[206] Appellant's testimony did not raise the mistaken belief that at the time of the collision he instantaneously concluded that someone threw something at his truck to shatter the headlight as he contended in his written mistake-of-fact request.[207]

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[204] (RRIV-301-302, 311, 315, 316, 318, 325) (claiming not to know what struck his truck, and that something thrown at it was only one of several theories he had about what may have caused the damage).

[205] *Compare id*. *with* (RRIV-277, 280, 286-287, 299, 301-302) (showing girlfriend's belief something was thrown, but when she asked appellant he told her he "didn't know what it was."); *see also* Tex. Penal Code Ann. §8.02(a) (West 2014); *Celis*, 416 S.W.3d at 430 (holding that to charge on mistake of fact the mistaken belief must be held by the defendant and must negate the culpable mental state required to commit the charged offense).

[206] (RRIV-311, 317-318).

[207] *Compare* (RRIV-301-302, 311, 315, 316, 318, 325) (claiming not to know at the time or immediately after what caused the damage) *with* (CR-388-389) (written request proposing language for the mistake-of-fact jury instruction but confining mistaken factual belief to one there someone threw an object at his truck).

V. Appellant's oral request for a mistake-of-fact instruction in the trial court did not hinge on a claim that he did not believe he was in an accident, but instead on a claim that he did not know if he had struck a person or a vehicle.

Appellant acknowledged that his truck struck something, and he contested only knowledge of what it struck. As his attorney explained during the charge conference when he requested the mistake-of-fact instruction: "…a reasonable mistake of fact to believe that something had been thrown, or an object hurled, or something had hit [appellant], that other than a person or a vehicle."[208] Again, appellant's testimony raised no such mistaken belief that a bottle was thrown at him, instead his girlfriend raise it.[209] But when she suggested it to appellant he responded that, "he didn't know what it was[.]"[210] He expressed no mistaken belief concurrent with the accident that he clearly believed someone had thrown something at him.[211] Were his testimony believed, he claimed to be undecided during and immediately after the accident as to what struck his truck with enough force to shatter the light.[212] He saw no one at the time whom he sought to

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[208] (RRV-91).
[209] (RRIV-301-302); *see also* (RRIV-311, 315, 316, 318, 325, 335, 338-339).
[210] (RRIV-301-302); *see also* (RRIV-311, 315, 316, 318, 325, 335, 338-339).
[211] (RRIV-301-302, 311, 315, 316, 318, 325).
[212] (RRIV-301-302, 311, 325).

blame for throwing something at his truck.[213] He also considered it just as possible that something flew up from the road or something simply hit his truck.[214]

Appellant's oral request for a jury instruction focused on a mistaken belief about what struck his truck, as well as a lack of knowledge that the collision involved a person or a car.[215] The First Court correctly held that the evidence did not raise the mistake-of-fact defense he requested orally.[216]

VI. The mistake-of-fact instruction appellant requested was not supported by any evidence that appellant held a reasonable belief at the time of the accident that someone threw something at his car from which to claim absolution from the duty to investigate and render aid.

This Court has long held that when the evidence viewed in the light most favorable to appellant does not establish the mistake-of-fact defense

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[213] (RRIII-311, 318, 325, 335, 338-339).
[214] (RRIV-311, 315, 316, 318, 325, 335).
[215] *See* (CR-387-389; RRV-91).
[216] *See Curry*, 2018 WL 2106897, at *4 ("Even if the jury had determined that Curry was simply mistaken in his belief that he had not struck a person, this mistake did not negate his knowledge that he had been in a collision that damaged his truck."); *see also* (RRV-91-92) (asking for mistake-of-fact instruction about a reasonable mistake about whether appellant had something thrown, hurled, or something hit him *other than* a person or a vehicle).

the trial court may properly refuse the instruction.[217] Unlike *Granger v. State*, this was not a question of reasonableness, but instead one where the evidence when viewed from appellant's perspective it did not support a claim that appellant was unaware of his involvement in an accident.[218] Rather, he had significant body damage to his truck, and he was concerned enough that he returned to the scene to see what had caused the damage, but still he never got out of his truck or performed an investigation to determine whether someone had been injured.

All the affirmative evidence established that appellant's car collided with something with enough force to shatter the headlight, bend the fixture around it, and cause dents to the side of his truck.[219] He did not stop and assess what caused the damage, much less check to see if anyone had been injured or killed despite the force used to damage his truck, and instead he drove on to his destination without performing the duties required under Section 550.021, the very conduct the statute sought to

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[217] *Dyson*, 672 S.W.2d at 463; *see also Granger*, 3 S.W.3d at 38.

[218] *Compare Granger*, 3 S.W.3d at 38 (finding the defendant's claim that he did not know the car was occupied when he fired upon it sufficient to raise a mistake-of-fact instruction regardless of whether he showed that was a reasonable belief) *with* (RRIV-311, 315, 325-327) (showing knowledge of a shatter headlight and road debris from an unknown source striking appellant's truck while he drove it).

[219] (RRIV-325-327; State's Exhibit No. 58-64).

outlaw.[220] When viewed in the light most favorable to appellant, he expressed no mistake of fact surrounding whether he knew his car hit something and was involved in a collision, but instead he raised the same defeated argument that he did not know the damage involved a person, and thus he did not consider it an accident.[221]

Appellant expressed no clear belief held at the time he left the scene that someone threw something at his car from which to claim absolution from the duty to stop, investigate, and render aid.[222] Instead, he cited that as one of the many possibilities he considered, none of which did he settle

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[220] *See* (RRIV-311-314, 325-327); *see also* Tex. Transp. Code Ann. §550.021(a) (West 2017); *Mayer*, 494 S.W.3d at 850 (citing House Comm. on Transp., Bill Analysis, Tex. H.B. 3668, 83rd Leg., R.S. (2013)) ("[T]he Legislature explicitly identified and contemplated the 'loophole' in the prior version of the statute that could be interpreted as requiring the State to show that the driver knew that the accident involved a person before it may secure a conviction for failure to stop and render aid. In its analysis of House Bill 3668, the Transportation Committee identified a situation of growing concern in which motorists who failed to stop and render aid claimed that they did not know they had hit a person.").

[221] *Compare* Tex. Gov't Code Ann. §311.011(a) (West 2017) (applying conventional meaning to undefined statutory terms); *see also* New Oxford American Dictionary 9 (3rd ed. 2010) (defining accident as "unfortunate incident that happens unexpectedly and unintentionally, typically resulting in damage or injury."); *Steen*, 640 S.W.2d at 913 (interpreting "involved in a collision" to be sufficient to show "involved in an accident" for purposes of failure to stop and render aid); *Sheldon*, 100 S.W.3d at 500-04 (defining accident broadly in the context of automobile accidents); *Rivas*, 787 S.W.2d at 114-16 (stating that "involved in an accident" has not been defined by statute or judicially, it is given its ordinary meaning, but the term certainly includes a collision) *with* (RRV-91; CR-388-389) (arguing in support of a mistake-of-fact instruction a reasonable belief that something had been thrown at his truck, and that he had hit something other than a person or a vehicle).

[222] (RRIV-310-311, 314, 317, 318, 325, 326, 330, 335).

upon at the time of the accident.[223] He remained uncertain of what caused the damage both at the time he made the decision to leave the scene without investigating and after returning the second time when he again failed to stop, investigate, and render aid.[224] Nothing in appellant's testimony raised a mistaken belief that negated the culpable mental state required to prove failure to stop and render aid.[225] The trial court properly refused appellant's requests for a mistake-of-fact instruction, and the First Court correctly upheld the decision.

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[223] (RRIV-311).

[224] (RRIV-301-302, 311, 313-314, 325-330).

[225] *Compare id*. (claiming no knowledge or firm belief at the time as to what might have caused the damage) *with* Tex. Transp. Code Ann. §550.021 (West 2014) (requiring a person to stop, remain, investigate, and render aid when involved in an accident); Tex. Penal Code Ann. §8.02(a) (West 2016) (defining a mistake of fact as a reasonable belief about a factual matter that negated the culpability required to commit the crime).

PRAYER

The State respectfully requests that this Court affirm the decision of the First Court of Appeals because sufficient evidence to prove appellant's guilt for failure to stop and render aid supported the verdict, and because the mistaken-of-fact instruction appellant requested did not negate his culpable mental state for the offense.

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February 28, 2019

CERTIFICATE OF COMPLIANCE

The undersigned attorney certifies that this computer-generated document has a word count of **11,741** words, based upon the representation provided by the word processing program that was used to create the document.

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